

1 ("Harding") against USA Commercial Mortgage Company ("USACM") in the amount of
 2 \$21,792.24.¹

3 Here, the Subject Proof of Claim is based upon an investment in the Beastar Loan.
 4 On September 17, 2009, the USACM Trust filed omnibus objections to claims arising out
 5 of Direct Lender investments in the Beastar Loan. The omnibus objections sought to
 6 disallow the Beastar claims in full because the borrower repaid the Beastar Loan. On
 7 December 18, 2009, the Court heard the Beastar omnibus objections and sustained them.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 I. JURISDICTION

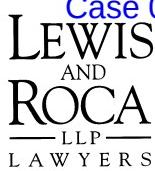
10 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
 11 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
 12 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

13 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and
 14 Bankruptcy Rule 3007.

15 II. APPLICABLE AUTHORITY

16 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
 17 will be allowed unless a party in interest objects. If a party in interest objects to the proof
 18 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
 19 shall allow the Claim except to the extent that the Claim is "unenforceable against the
 20 debtor . . . under any . . . applicable law for a reason other than because such claim is
 21 contingent or unmatured." 11 U.S.C. § 502(b). A properly filed proof of claim is
 22 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof
 23 of claim controverts the presumption, the creditor ultimately bears the burden of
 24 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*

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 26 ¹ In compliance with Nevada LR 3007, a copy of the first page of the Subject Proof of Claim is attached as
Exhibit A



1 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
 2 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

3 III. BACKGROUND FACTS

4 On April 13, 2006 ("Petition Date"), USA Commercial Mortgage
 5 Company ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty
 6 Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC
 7 ("DTDF"), USA Capital First Trust Deed Fund, LLC ("FTDF") and together with DTDF,
 8 the "Funds") (collectively the "Debtors"), filed voluntary petitions for relief under chapter
 9 11 of the Bankruptcy Code. The Debtors continued to operate their businesses, if any, as
 10 debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
 11 Post-petition management of the Debtors was under the direction of Thomas J. Allison of
 12 Mesirow Financial Interim Management, LLC ("Mesirow"), who served as the Chief
 13 Restructuring Officer.

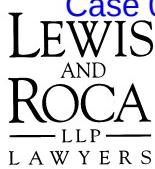
14 On January 8, 2007, the Court entered its Order Confirming the "Debtors' Third
 15 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
 16 2376]. Under the Plan, the USACM Trust is the successor to USACM with respect to
 17 standing to seek allowance and disallowance of Claims. The USACM Trust exists as of
 18 the Effective Date of the Plan, March 12, 2007. Geoffrey L. Berman is the Trustee.

19 A "USA Capital Loan Summary as of February 28, 2007" prepared by Mesirow
 20 indicates the Beastar Loan was repaid by the borrower. (**Exhibit B**, attached.)

21 IV. OBJECTION

22 The USACM Trust objects to the Subject Proof of Claim because the borrower
 23 repaid the Beastar Loan in full and, in turn, the Direct Lenders were repaid.

24 There is, however, unremitted principal associated with the Beastar Loan. Harding
 25 was given a scheduled claim in the amount of \$21,792.24 for unremitted principal
 26



1 associated with the Beastar Loan. The Trust has already made a distribution to Harding
 2 based upon the scheduled claim.

3 **V. CONCLUSION**

4 Based on the foregoing, the USACM Trust objects to Proof of Claim No. 10725-
 5 00935-2 and asks that the Court disallow it in full. If the Court sustains this objection, the
 6 Harding's \$21,792.24 scheduled claim for unremitted principal associated with that Beastar
 7 Loan will still remain in effect and the Hardings will be eligible for future distributions
 8 from the Trust based upon that scheduled claim. The USACM Trust also requests such
 9 other and further relief as is just and proper.

10 DATED this 28th day of September, 2011.

11 LEWIS AND ROCA LLP

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 20 first class postage prepaid on
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